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HUMAN RIGHTS

IN SHARIAH AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

حقوق الإنسان

في الشريعة الإسلامية والمواثيق الدولية لحقوق الإنسان

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HUMAN RIGHTS IN SHARIAH AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS*

By :

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INTRODUCTION

The subject of human rights forms an integral part of the syariah. Despite the early birth of the Islamic conception of human rights, its significance and contribution have generally been ignored by most western scholars as if Islam has no connection with human rights. As a result, Islamic aspects of human rights have been excluded from the history, development and interpretation of mainstream human rights. For many centuries, in the words of Professor Weeramantry, Islam was misrepresented as a force for evil. Islam was represented as being wicked, blasphemous and opposed to all that civilization stood for – although it stood for moral values, intellectual advancement and the rule of law (1988, 129). The West seems to be less appreciative of Islamic concept of human rights. Misconception of ideas and confrontational and skeptical approaches adopted with regard to human rights have led to unnecessary and constant disharmony and disrespect among different communities and between the Muslim and non-Muslim worlds. This paper principally aims to provide an overview of the Islamic views and approaches to human rights in order to clear some of the misconceptions that still linger on in the minds of some people and hopefully help to transform the apparent antagonistic attitude into a mutual respect and better understanding of the complexities of human rights in a plural world. In the course of discussion, some reference will also be made in general to the international documents and western ideas on human rights.

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There has been much misunderstanding and prejudice, especially in the West regarding the issue of human rights in Islam. Misconception particularly revolves around the concept of Islamic State in relation to human rights in general, and the position of non-Muslims and women in particular. As a result, Islam has been allegedly associated with rigidity, intolerance and denial of human rights. The reason may be attributed to an apparent lack or absence of exposition of the Islamic point of view concerning human rights in the Western legal and political studies which resulted in the lack of respect and appreciation of other non-western values and dimensions. This paper is also to highlight some of the methods, scope and limits of human rights according to the Islamic perspective.

MAIN CHARACTERISTICS OF SHARIAH

Islam is a comprehensive religion that embraces a complete way of life. It is the embodiment of divine guidance for all fields of human activities. The main purpose of human existence is to worship Allah and act in accordance with His teachings. Thus, there is no separation between religion and all aspects of human life. In Islamic constitutional theory, there is no separation between religion and state. In view of the all-inclusive nature of Islam, it covers such varied subjects as religious rituals, personal character, morals, habits, family relationship, social, political and economic affairs, public administration, rights and duties of citizens, judicial system, domestic and international laws, international relations, animal rights and the environment.

The Islamic legal aspects are usually termed "shariah", albeit the term may be given a wider connotation which embodies both legal and non-legal principles. The most distinguishing characteristics of shariah is that it is a sacred and universal law, emanating from Allah (Qu'ran) Himself as the sole law giver and transmitted to mankind through his Prophet Muhammad (s.a.w) whose practice (Sunnah) supplements this law. Another major source of Islamic law is originally known as "Ijtihad". This is an exercise of expert reasoning to arrive at a legal opinion, on any issues

not specifically mentioned in the Qur'an and Sunnah, carried out by qualified Muslim Jurists. There are other bases of law that are either derived from the Qur'an and Sunnah, or exist in the various forms or techniques of Ijtihad such as ijma (consensus of the Muslim jurists)

The main objective of the Shariah is to build human life on the basis of virtues. (ma'rufat) and to cleanse it of the vices (munkarat). The individual and society are required to conform to these norms. This requirement applies to both Rulers and the ruled. Islam lays down the entire scheme of life in such a manner that virtues may flourish and vices may not poison human life. What is laid down in the Qur'an and Sunnah must not be changed in order to satisfy the everchanging and imperfect nature of human beings, but on the contrary, they should adjust themselves so as to live in accordance with the religious and moral requirements.

The Shariah contains the basic guidance for the Muslim community and the universal values of human beings. It also embodies constitutional principles. By virtue of its origin, the shariah is the ultimate source of authority in an Islamic State. The purpose of the state and the very reason of its existence is to protect the religion of Islam and administer worldly affairs (hirasat al-din wa siyasat al-duniya) as manifested in the concept of caliphate (Mawardi,5). While the interpretation and development of the law, as well as the details and forms of a government are left to the ijtihad and discretion of the community, the basic principle as embodied in the shariah, are eternal and immutable. The state is morally obliged to accept its limitation on its executive, legislative and judicial powers.

THE ORIGINS OF HUMAN RIGHTS

In a vast literature on human rights jurisprudence, there is no universally accepted and authoritative definition of a human right (H.Victor Condè, 2004), probably because of its diverse cultural backgrounds and philosophical underpinnings. This is not an attempt to provide a comprehensive definition of human rights. However, in Islamic perspective, human rights may be described as those

rights derived from the Quran, the sunnah of the Prophet and ijtihad of qualified jurists through methods of interpretations recognized in the shariah. In other words, such rights must be based on divine guidance and on theories developed within the walls of shariah.

In western political or constitutional history, the origins and development of human rights have been normally referred to the Roman and Greek civilizations, and in modern times, attributed to the English Magna Carta (1215) and a Bill of Rights (1688) and the declarations of human rights in France (1789) and the United States of America (1776,1791) which later culminated in the promulgation of several international declarations, charters and conventions on human rights and fundamental freedoms in the twentieth century, particularly after the second world war. The atrocities and violations of human rights that occurred during World War II galvanised world wide opinion and made human rights a universal concern. The theoretical foundation of fundamental rights has almost always been referred to the works of European political philosophers of the seventeenth and eighteenth centuries. It is generally asserted by the Western writers that human rights are the ofspring of natural rights, which themselves evolved from the concept of natural law. Natural law, is that standard of higher-order morality against which all other laws are adjudged.

It is clear from the Western political and constitutional history, that the Islamic contributions to the global development of human rights had been left out. There is a historical evidence that Islam introduced the idea of human rights and a constitutional government as early as the seventh century.

The fact is that the Islamic message since the seventh century contained principles of human rights which formed part and parcel of its basic tenets, along with its great emphasis on duties of man towards fellow human beings. Islam condemned various forms of violation of human righsts, for example, the killing of innocent people (Quran, 81:8-9) and slavery (Ali : Abdel Wahid Wafi 1967, 70). A particular mention should be made of the Charter of Medina, described as the "first written constitution in the world", promulgated by the Prophet Muhammad (Hamidullah 1975). The

Constitution (Sahifah Madinah) defined the rights and duties of both Muslim and non-Muslim citizens.

Historically human rights were guaranteed in the Qur'an and the Sunnah long before the appearance of Western civilization. There are also precedents set by the Rightly Guided Caliphs. The fundamental rights in Islam are of greater scope, depth, and dimension than the rights conferred by secular states. Although such rights can also be incorporated in a written constitution, they however derive their sanction from the shariah, and thus, cannot simply be abrogated by the state.

It follows that in Islam, a bill of human rights is not one which is originally composed by a committee of scholars or leaders, resolved and promulgated by a government, a parliament or a representative assembly. Muslims believe in a bill of rights which is eternal, whose author is Allah. Theirs is a bill which was taught by all the Prophets, and which is crystallised in the Holy Qur'an (Faruqi 1983, 12). An Islamic bill of rights was promulgated by Allah, for all places and times. It is in fact an integral part of the shariah, and embodied in the Islamic constitutional law and political principles.

The rights guaranteed in the shariah, whether directly or indirectly, have not been the result of a bitter series of tussles by men against men, or by subjects against their rulers, as generally occurred in the Western political history. On the other hand, they have been readily available in the Qur'an and the Sunnah. The general rights of religious tolerance and privacy, for example, were already entrenched in the Qur'an since the seventh century, whereas in the West, both rights had evolved over many centuries before they became established, or began to be given some recognition. The shariah envisages a holistic and teological view of human rights, and provides some details and guiding principles governing their development and regulation of their implementation. Hence, human rights are ot subservient to an unrestricted claim, on the basis of an overemphasis on unbridled individualism, and an illusive notion of Western human rights.

ISLAMIC LITERATURE ON HUMAN RIGHTS

The Qur'an and the Sunnah are replete with principles of human rights. However, the subject of fundamental rights and liberties, according to one commentator, has received little attention in the works of early ulama' (Kamali 1993, 23; 1994, 17-19). The reason is perhaps understandable, in view of the fact that the general approach of early Islamic jurisprudence placed great emphasis on the moral and religious duties of Muslims, and that human rights are inherent or imbedded in the shariah. It may also be argued that because of the different approach and nature of Islamic law and political history, the Muslims, especially the early ulama' did not find it necessary to assert individual's rights, as the latter was part of the general and ordinary laws of the shariah.

Traditionally Muslims rarely studied politics in isolation from related disciplines. Problems such as the nature of the state, the varieties of governments, the qualifications of rulers, the limitations of their powers and the rights of the ruled were discussed as part of the comprehensive treatises on jurisprudence and theology – all securely within the unassailable walls of the syariah. The fact that political thought was always subsumed under some other disciplines in the spectrum of classical Islamic sciences did not by itself restrict its scope, or impoverish its content (Hamid Enayat 1982, 3-4)

The Islamic approach stressing on the concept of duty, rather than that of right, does not necessarily imply that Islam denies human rights, or play down their importance, because the very end of the shariah is to protect the interests and welfare of mankind, in this world and the next. It may be argued that the method adopted by Islam is more effective in protecting human rights, as Professor C. G. Weeramantary said :

> The result may now be very much the same but the route by which it is reached Is different. However, the Islamic stress on relationship with the divine, and the concept of duty, could well lead to a more dedicated and purposive commitment to human rights than might be possible in a system which depends on concessions grudgingly granted under compulsive pressures (Weeramantary 1988, 123).

In spite of the emphasis on the concept of duty, there were occasions when rights were couched in a positive and direct manner. This can be seen, for example, in the constitution of Medina, and the Farewell Sermon of the Prophet Muhammad at Arafat, although the wording of both documents may not be the same with that of modern constitutions or declarations of rights. In any event, human rights and duties are an integral part of the study of fiqh (Islamic law). For example, Abu Hanifah was reported to have defined the term fiqh as "a science which concerns the individual's rights and duties" (ma'rifat al-nafs malaha wa ma 'alaiha) (Hamidullah 1973, 4). This definition is in line with the fact that in Islam, rights are interwoven with duties.

Since the middle of the twentieth century, there has been a noticeable growth of modern literature on Islamic political theory and human rights. Unlike the classical works, a chapter or the entire book or article has been sometimes devoted to studies or human rights.

HOW HUMAN RIGHTS ARE SECURED

Islam advocates a holistic approach to human rights. Whereby they are considered an integral part of the whole shariah scheme. There are at least four methods human rights are deduced and secured: Political and constitutional principles, specific and implied rights, residual nature of liberty and other Islamic notions and values that run through the teachings of Islam which relate to some elements of human rights.

Political and Constitutional Principles

Several fundamental principles of government have been deduced by some constitutional and political scholars having some bearing on human rights. The protection of human rights is either manifest or inherent in such principles. The most important of them may perhaps be summarized as follows:

I. Sovereignty of God or the supremacy of shariah (hakimiyyatullah or siyadat al-shariah) : This concept erodes the very basis of an absolute rule of man which has always been the cause of the violation of human rights.

II. Vicegerency and trusteeship (khilafat and amanat) : These two principles will bring about the concepts of accountability and responsibility of the rulers before God and the people.

III. Consultation (shura) : This principle confers political rights on the people, including the right to be consulted in the public affairs of the state.

IV. Justice ('adl) : This principle is very comprehensive and has been given great emphasis in the Qur'an and the Sunnah. It is enjoined in a general universal order encompassing all human affairs and relationship. Justice must be seen to to be done even, to adversaries and, against one's own interests or, at the expense of the loved ones. At the same time, oppressors are strongly condemned.

V. Freedom and equality (hurriyyah wa musawat). Some scholars extended their discussions by giving specific provisions on the rights and duties of the rulers and citizens (huquq wa wajibat). The detailed provisions on human rights will be highlighted later. Protection of Human rights is also part of the responsibilities of the State (wajibat-al-Dawlah) or its positive obligations. For this purpose, emphasis is not only placed on civil and political rights, but also on the rights to economic security. Thus, it is the duty of the state to provide economic security to its citizens without discrimination. Other freedoms may be meaningless without such basic necessities of life as food, clothes and shelter, and economic opportunities. They are necessary for the maintenance of human happiness and dignity. It is the moral and legal duty of the state to ensure that "no person's standard of living fall below an equitable level" (Muhammad Asad 1980, 88, 91). Therefore, all the resources of the state must be harnessed, in order to achieve these objectives.

There are other more detailed principles of state and government discussed by some Muslim scholars and jurists. These principles are mandatory upon a ruler. Based on those principles, we may safely say that Islam introduced the concept of a limited government, in the sense that the Islamic rule is subject to some limitations in favour of human rights and interest.

The religious basis of the state does not mean, however, that the Islamic government is theocratic where the role of the people and their freedom are denied, as it has been misunderstood by most Western scholars. Ample room is given to the people, under the principle of Ijtihad and consultation (shura), in order to work out details, formulate policies and enact detailed regulations in the light of the specific provisions in the Qur'an and Sunnah and the general principles or spirit of the shariah, especially in the area of constitutional and administrative law. Islam only lays down the binding principles of a government (Mabadi' al-hukmi) whereas its forms (ashkal) and detailed procedures are generally left to the people to decide in order to suit their changing needs and circumstances.

Specific and Implied Rights

The principal aim of the shariah (maqasid al-shariah) is to secure compliance with the five basic principles or objectives, namely the protection of life, property, religion, descent and reason. These objectives govern the entire development of law in the state as well as in international relations. From these Islamic injunctions numerous specific rights can be deduced, for example, the rights to life, property and religious belief.

Human rights are the necessary outcome of man's dignity declared in the Qur'an. Islam's appeal for human dignity was addressed to all human beings without distinction as to race, sex, colour, or creed. This message may be summed up in the following Quranic verse :

> "We have dignified the Children of Adam and transported them around on land and at sea. We have provided them with wholesome things and favoured them especially over many of those whom we have created."(Quran, 17:70)

If that is the nature of human beings, it is natural that other concepts shall flow from it, such as political and social freedoms, equality between men and women, etc.

Certain rights are established in an explicit an affirmative manner, as it is evident, for example, in freedoms of religious beliefs and expression. The Qur'an emphasizes the importance of these freedoms on many occasions (Quran, 2:256; 10:99). The word 'haq' and its derivatives that appear in the Quran on many occasions also have some bearing on the theory and origination of rights (Kamali 1993).

Freedom of religion naturally extends to political and ideological differences. It also includes the freedom to propgate and practise one's religion. Islam also grants freedom of thought and expression to all human beings, and sometimes, the exercise of this freedom is considered obligatory. Highest credit will be given to those who speak up for truth in the face of a tyrant (Abu Daud).

Freedom of speech may also be implied under a variety of other topics or other principles in the Qur'an. For example, such freedom can be subsumed under such doctrines as *hisbah* (commanding good and forbidding evil), the religious duty of *nasihah* (advice). Again, the recognition of the freedom of speech, in order to be effective, subsume and necessitate freedom of association and the right of opposition, provided that the views expressed do not run counter to the shariah (Kamali 1993, 26). Another related right is the right of speaking the truth against the tyranny of the government. The exercise of this right or duty was regarded by the Prophet Muhammad as the best kind of jihad (Abu Daud).

<u>Other Ideas and Values In Relation To Human Rights</u>

There are other legal and non-legal ideas running through the teachings of Islam that relate to human rights. For examples, the notions of sharing and helping those in need, caring for the

family, kindred and neighbours, property as a trust, bro therhood, solidarity and cooperation, industrial relations, fair contract and honouring of one's engagements, legal representation, judicial independence and many more. All these notions give meaning to the Islamic concepts of human rights.

Residual Nature of Liberty

The concept of *Ibahah* (liberty) is one of the important legal maxims in Islamic law, and it lies at the foundation of law. As will be seen later, the liberty of a Muslim is restricted by the legal commandments of the Qur'an and the Sunnah, for his own interest in this world and hereafter. However, one of the important legal principles says that everything is presumed to be allowed (al-asl fi al-ashya' al-ibahah) until the existence of its restriction is proven.

As the number of legal restrictions are small, the scope of freedom for human beings is certainly vast. Therefore, it is impossible to mention all the permitted rights. According to one commentator, the fact that certain permitted rights are explicitly mentioned in the Qur'an and the Sunnah does not change their nature, or make them differ for any purpose from those not expressly and specifically mentioned (Ibrahim Khalid al-Mahdi 1988, 43). No matter how such rights have been deduced and multiplied under the authority of shariah, one thing is certain that all the Muslims are perforce obliged to respect them. However, another commentator suggested that a formal distinction between fundamental rights and other rights in the shariah can be made with reference to the norms and principles contained in the Qur'an and the Sunnah (Kamali 1994, 22).

ISLAMIC BILL OF RIGHTS

In 1951, a convention of the Ulama' representing all schools of thought which was held in Karachi, agreed on 21 basic principles of an Islamic State, and the provisions on human rights and obligations were included. There is also the Universal Islamic Declaration of Human Rights, proclaimed by the Islamic Council of Europe and the Organization of Islamic Conference (now

Organisation of Islamic Cooperation) in 1981 and 1990 respectively. In addition, there is a specific resolution on the Protection of Human Rights in the Islamic Criminal Justice System, agreed upon by the First International Conference on the Protection of Human Rights in the Islamic Criminal Justice, held in Italy in 1979. Provisions on the rights of the people were also enshrined in the Modern constitutions of Muslim countries, including the Basic Law of Governance of the Kingdom of Saudi Arabia 1992 where it is stated that the state protects human rights in accordance with the Islamic Shariah (Article 26). Similar provisions can also be found in several other drafts or models of Islamic Constitution, For Example, the Islamic Constitutional Models drafted by the Islamic Research Academy of Azhar University and the Islamic Council of Europe.

Thus, specific and substantive rights are now easily discernable. For example, a convention of the Ulama' unanimously agreed in 1951 (Karachi Convention) that the 'citizens shall be entitled to all the rights conferred upon them by the Islamic law, i.e., they shall be assured within the limits of the law, of full security of life, property and honour, freedom of person, freedom of expression, freedom of movement, freedom of association, freedom of occupation, equality of opportunity and the right to benefit from public services' (maududi 1969, 321-3).

A much more detailed catalogue of human rights is to be found in the Universal Islamic Declaration of Rights 1981. This Declaration guarantees right to life, freedom, equality and prohibition against impermissible discrimination, justice, fair trial, protection against abuse of power, protection against torture, protection of honour and reputation, right to asylum, rights of minorities, right and obligation to participate in the conduct and management of public affairs, freedom of belief, thought and speech, freedom of religion, right to free association, rights evolving economic order, protection of property, right to status and dignity of workers, right to social security, right to found a family and related matters, rights of married women, right to education, right of privacy and right to freedom of movement and residence (European Human Rights Report 1981, 433-41).

The Provisions of human rights mentioned above were merely declaratory of what was already available in shariah and provided for the purpose of systematisation. Such declaration is not the beginning of human rights in Islam. The aim was to make the position clearer and avoid any misunderstandings about the Islamic concept of human rights.

INTERNATIONAL INSTRUMENTS

International human rights instruments are treaties and other international documents relevant to international human rights law and the protection of human rights in general. The instrument can be divided into global (I) and regional in the forms of declarations, conventions and charters. The Regional instruments include for example thos of Africa, America and Europe. All these instruments contain general and specific or more detailed protection of human rights.

The universal Declaration of Human Rights (UDHR), in particular, which will be given attention in this section, was considered the fountain head document of international human rights adopted by the resolution of the United Nation on December 10, 1948. This document set forth a list of specific and and substantive human rights recognized by most states. The declaration arose directly from the experience of the Second World War. It has served as the foundation for two binding UN human rights covenants, the international on Civil and Political Rights, and the

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(I) Declarations : Declaration of the Rights of the Child 1923, Universal Declaration of Human Rights (UN, 1948), Declaration on the Rights and Duties of Man (OAS, 1948), Declaration on the Rights of Disabled Persons (UN, 1975), Declaration on the Rights to Development (UN, 1986), Cairo Declaration of Human Rights in Islam (OIC, 1990), Vienna Declaration and Programme of Action (World Conference on Human Rights, 1993), Declaration of Human Duties and Responsibilities (UNESCO, 1998), Universal of Declaration on Cultural Diversity (UNESCO, 2001), Declaration on the Rights of Indigenous People (UN, 2007), UN Declaration on Sexual orientation and gender identity (UN, 2008). Convention : International Covenant on Civil and Political Rights (ICCFR), International Convention on the Suppression and Punishment of the Crime of Apartheid (ICSLA), Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees International Covenant on Economic on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC), Convention Against Torture (CAT), Convention of the Elimination of All forms of Racial Discrimination (ICERD), Convention of the Elimination of All forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination Against Woman (CEDAW), International Convention on the Protection of the Rights of All Migrant Workers and members of their Families (MWC), Convention on the Prevention and Punishment of the Crime of Genocide, Convention on the Rights of Persons with Disabilities (CRPD), International Convention for the Protection of all persons from Enforced Disappearance, Indigenous and Tribal Peoples Convention, 1989 (ILO 169).

International Covenant on Economic, Social and Cultural Rights. While the UDHR built up and important body of universal doctrine, there has been a mounting volume of criticism of these norms on the basis that they incorporate Western-oriented ideas and that, especially the time of the Universal Declaration, sufficient note was not taken of other traditions especially the Islamic (Weeramantry 1988, 168). The declaration was adopted unanimously, with the abstention of the Soviet bloc, Apartheid South Africa and Saudi Arabia. Predominantly Muslim countries, such as Sudan and Saudi Arabia, frequently criticised the Universal Declaration of Human Rights for its perceived failure to take into account the cultural and religious content of non-Western countries.

A number of rights were incorporated in the Declaration, for example, right to life, prohibition of slavery, torture, right to equality, movement, asylum, right to marry and form a family, equality to marriage, and freedom of religion including right to change religion or belief. This declaration was criticised by some Muslim countries and Muslim scholars, as some provisions and terms used in the document were said to have raised some shariah issues. There are also concerns with the philosophical basis of the document, and meaning and scope of certain provisions (Husin Mahmud Muhammad al-Shaqirat 2010, 99-109). Despite the ambivalent attitudes of some Muslim Countries towards the draft of UDHR (Abdullahi A. An – Na'im 1999) but the concerns of the Muslim countries are evident later with the fact that the members of the Organisation of Islamic Cooperation (OIC) officially resolved to support the Cairo Declaration on Human Rights in Islam as an alternative document.

PROTECTION OF NON-MUSLIMS

Unlike the *jus civile* of the Roman law which only protected those who were within the jurisdiction of the Roman state, the Islamic concept of human dignity applies to all humans, irrespective or whether they were Muslims or not (Weeramantry 1988, 115). The traditional categorization of citizens into Muslims and non-Muslims (dhimmi) was merely aimed at distinguishing the Muslims with regard to their responsibilities and requirements in the Islamic system, without any intention to discriminate against the non-Muslims in any other respect, such as humanity, race or colour (Abdulrahman Abdulkadir Kurdi 1984, 57). The distinction in the terms merely remained one of political administration and not of human rights (Abdul Rahman I. Doi 1984, 427). The Arabic term *dhimmi* means "those whose obligations are a trust upon the conscience and pledge of the state or the nation' (Said Ramadan 1970, 122).

It is perhaps significant that such term and classification did not appear in any declarations of Islamic human right, including the basic law of Saudi Arabia. The Convention of Ulama 1951 also declared that :

> The non-Muslim citizens shall have, within the limits of the law, complete freedom of religion and worship, mode of life, culture and religious education. They shall be entitled to have all their matters concerning personal law administered in accordance with their own religious code, usages and customs. All obligations assumed by the state, within the limits of shariah towards the non-Muslim citizens shall be fully honoured. They shall be entitled equally with Muslim citizens to the rights of citizenship (Maududi 1969, 321-3)

The position of the non-Muslims in early history of Islam can be seen in the Constitution of Madina (623). This document served as a practical example of a constitutional government introduced by the Prophet fourteen centuries ago, under which the Muslims and non-Muslims lived together and equally enjoyed human rights. The Constitution, among other things, defined the rights and duties of the citizens, and thus, reflected a mutual understanding between the federation of the different clans of Muslims on the one hand and of the Jews, on the other.

Despite the constitutional provision on the supremacy of the shariah in Islamic State, it guaranteed liberty of conscience, religion, equality, equity and fraternity to all, irrespective of one's caste, creed, colour or social situation in life (Hamidullah 1975). For example, the Constitution provided that 'the Jews shall have their own religion and the Muslims their own' (art. 25). Further, it stipulated that the Jews and Muslims 'must help the other against anyone who attacks the people of this document' (art. 37). The Islamic rule also retained some of the existing customs of the people, and under the federal system of government, different clans were given some autonomous powers, especially in religious and cultural matters (Zafir al-Qasimi 1982, 31-37).

The rights given to a non-Muslim are of an irrevocable nature unless he renounces the covenant which grants him citizenship. It become every Muslim's religious duty to protect life, property and honour of a non-Muslim since duty forms an important part of religious faith. It is wrong to presume that since an Islamic state is based on a definite ideology, the state will annihilate the non-Islamic elements within its fold. The Qur'an and Sunnah speak of strengthening and cementing the relationship between Muslim and non-Muslim citizens. The Qur'an said :

> God does not forbid you to act considerately towards those who have
> never fought you over religion nor evicted you from your homes, nor
> (forbid you) to act fairly towards them. God loves the fair-minded. God
> Only forbids you to be friendly with the one who have fought you over
> (your) religion and evicted you from your homes, and have abetted others
> In your eviction. Those who befriend them are wrongdoers (Quran, 60:8-9).

The Prophet warned the Muslims against any high handedness towards the non-Muslims and he said: "whoever persecuted or usurped or took work from him beyond his capacity, or took something from him with evil intentions, I shall be a complainant against him on the Day of Resurrection" (Abu Daud). He also said : "One who hurts a *dhimmi*, he hurts me; and who hurts me hurts Allah" (Al-Tabrani). The shariah has emphasised a great deal on the rights of the non-Muslims so much so that any Muslim who violates them is deemed to have committed a grave sin. Furthermore, whatever the extent of oppression which a non-Muslim state may perpetrate on its

Muslim citizens, it is not permissible for an Islamic State to retaliate on its non-Muslim subjects in the slightest degree (Maududi 1982, 11).

SAFEGUARDS AND REMEDIES

Besides the constitutional guarantee of human rights and freedoms, the shariah also provides necessary safeguards and remedies. These naturally follow from the very nature or the politically system envisaged in Islam. The remedies are to be provided by the state machinery and the court. Furthermore, violators are also answerable in the next world. Under the doctrine of the supremacy of shariah, political leaders, legislators an judges are obliged to comply with the shariah, and its violation will be considered unconstitutional. The factor which gives superiority to the Islamic attitude towards human rights is that it places their formulation and fulfillment within the religious obligation and the responsibility to answer for all actions at the Last Judgement.

Since the rights provided by the shariah do not change with the change of government, therefore the state has no right to encroach upon them. All governmental authorities and public duties are considered a trust, entrusted to them by God. From the principles of trust and accountability, it follows that the government possesses only the right of conditional obedience which is due only to those who observe the shariah, namely their duties towards citizens. Human rights can be rightly and justly protected through the unanimity of purpose and reciprocal obligations of the government and the people. An appreciation of the respective rights and duties, and their limits, will not only protect the freedom, but also guard against any inordinate claims.

In the Islamic constitutional theory, the liberty and honour of individuals depend on the fairness of the courts in protecting them from encroachment of other individuals and tyrannical or overzealous governmental officers. To achieve this, the state should invest human rights with legal sanction, enforceable through an impartial judicial system. An independent and responsible judiciary is a *sin qua non*_for an effective protection of human rights, freedom, justice and equality. The

hallmark of the independence and impartiality of the Islamic judiciary can be seen from the following statement of the Prophet Muhamamd:

> "O people, nations before you were destroyed and went astray because when a noble person committed a crime they did not apply the law to him but when an ordinary man committed the same crime they inflicted the legal penalty on him. I swear by God if Fatimah the daughter of Muhammad (referring to his own daughter) commits theft, Muhamamd will cut off her hand" (Bukhari and Muslim).

The principle of conditional obedience as mentioned earlier, in the words of Muhammad Asad, naturally presupposes the citizens' right and duty to watch over the activities of the government and to criticise its administrative and legislative policies whenever there is reason to suppose that matters are wrongly handled' (Muhammad Asad, 1980, 77).

A logical corollary of the rights to criticise is the right of the citizens to education and the right to have an access to necessary information, as Muhammad Asad further observed:

> But the duty and the right to express one's opinion freely may be meaningless and on occasion even injurious to the best interest of society if those opinions are not based on sound thought, which in turn, presupposes the possession of sound knowledge. Consequently, it is the citizens' right and the government's duty to have a system of education which would make knowledge freely accessible to every man and woman in the state (Muhammad Asad 1980, 7).

The state's duties must also be reflected in certain well-defined, positive obligations (Fathi Uthman 1982), 66; Muhammad Asad 1980, 85) so that the reciprocal approach to rights and obligations of both state and citizens can be justly established. The neglect of such duties and intrusion on rights should therefore be remedied and enforced by the court. The Karachi Convention 1951 agreed that it was the responsibility of the government to guarantee the basic necessities of life, i.e., food, clothing, housing, medical relief and education to all citizens without distinction of race or religion, who might temporarily or permanently be incapable of earning their livelihood due to unemployment, sickness or other reasons (Maududi 1969, 321-3). It is the purpose and duty of the

Muslim countries to protect human rights. Thus, human rights are not only of a defensive nature against the state.

PARAMETERS OF HUMAN RIGHTS

Political thinkers generally agree that freedom cannot be unlimited. However, there is no agreement about how wide the area of freedom that should be left undisturbed. In Islam, human freedom is not without any limits. Generally, the shariah restricts the scope of human freedom through do's (awamir) and don't's (nawahi). Human rights and freedoms are anchored in eternal principles and values. Their application may develop following human situations, but only with critical guarantees for the permanence of those principles and values. Human rights are only sacrosanct within the necessary limits prescribed by the shariah.

One of the Islamic legal maxims states that everything is permissible, unless there is a limitations imposed by the shariah. The limit is designed to protect the interest of human beings a merely rather than to restrict their freedoms. The general principles governing the limitation of human rights perhaps can be summed up in the words of Dr. Shaikh Shaukat Hussain as follows:

> Human rights….are as sacrosanct as other laws of the shariah and are thus to be observed in accordance with these. None of the Divine injunctions can be curtailed for the sake of human rights. It is clear from this that all laws laid down by the shariah limit the scope of human rights in general. Legislature or executive can pursue for implementation and limitation of human rights only in pursuance of injunctions of the shariah. It can go beyond these limitations only when the shariah permits it to do so. Where ever the injunctions concerning human rights are laid down in the form of certain objectives with major auxiliary principles it is implied that it has been left to human agencies to devise operative orders for achieving these objectives. Similarly where divine injunctions containing rights do exist in the form of broad outlines, necessary rules and regulations are to be provided by the state. In case where objectives, normative principles as well as operative orders are prescribed very little role is left for the Islamic state (Shaikh Shaukat Hussain 1990, 76).

In the absence of the principles or values based on revelation (wahyu), "right" and "wrong" will become purely relative terms, to be interpreted arbitrarily according to one's personal or

communal needs, which, in their turn, are subject to the continuous changes in one's socio-economic environment (Muhammad Asad 1980, 7).

There are specific grounds on the basis of which human rights can be restricted. Some of these grounds are explicit, and prescribed in details in the Qur'an and Sunnah. For example, as regards freedom of speech, the Qur'an among other things forbids the exercise of such freedom for stirring sedition, obscenity, defamation, blasphemy, hurting others and instigation of unlawful acts. In any event, freedom of expression must be exercised for the propagation of virtue and truth, and not for spreading evil or wickedness. Right to property can be curtailed, for example, if one's property was utilized, in a manner that might be harmful to others, or for unlawful purposes (Shaikh Shukat Hussain 1990, 76-80; Kamali 1994, 161-235).

At all events, there must be some valid reason before the state is allowed to infringe upon the rights of citizens. Article 8 of the Basic Principles of an Islamic State 1951 (Karachi convention) stated that no citizen shall, at any time, be deprived of the rights conferred by Islamic law, except under the law, and none shall be awarded any punishment on any charge without being given full opportunity of defence and without the decision of a court of law. For example, personal freedom cannot be violated, save after proving delinquency in accordance with the due process of law. It has been related that some people were arrested in Madina, in the days of the Prophet, for being of doubtful antecedents. Subsequently, while the Prophet was delivering the Friday sermon, a companion got up and enquired of him as to why and on what grounds had his neighbours been arrested. The Prophet kept quiet while the question was repeated twice, thus giving an ample opportunity to the Police Officer present there to explain the legal position. When the question was put a third time, and it again failed to elicit the reply from the police officer, the Prophet directed that those people should be released (Maududi 1969, 238-9).

HUMAN RIGHTS IN INTERNATIONAL PERSPECTIVE

The shariah is the unified source of moral precepts and it prevents duality of moral standards. In Islam what sanctions the individual's private conduct, also sanctions the individual's public conduct. All the human rights granteed by the shariah are meant for the welfare of individuals, societies and the world. The Qur'an introduced the Islamic notion of universality and a global understanding and co-operation. According to Islam, the concept of diversity should not deter a universal spirit of brotherhood and mutual recognition. The Qur'an said:

> O mankind, we have created you from a male and female, and set you up as nations and tribes so you may recognize (taaruf) one another. The noblest among you with God is that one of you who is the most righteous; God is Aware, Informed (Quran, 49:13).

The Farewell Sermon of the Prophet proclaimed that "the Arab has no superiority over the non-Arab and the non-Arab has no superiority over the Arab, all are children of Adam and Adam was made of earth". (Muslim). This hadith and the verse mentioned earlier reflect one of the most striking characteristics concerning human equality, provided for the first time in human history. While Islam recognises artificial boundaries and racial distinctions for facility of reference, it does not intend to restrict the social horizon of its members. On the other hand, it envisages a world organization wherein all members may enjoy equal status and rights without any distinction whatsoever. The Qur'an warns against the emergence of the more powerful nations to flout their contractual and other obligations towards the weaker (Quran, 16: 92).

Part of Western misrepresention of Islam was that Islam had no system of international law, no respect for treaties, no concept of human rights and no regard for neighbouring states (Weeramantary 1988, 130). This contradicts the historical fact that the world's earliest treatise on international law was written by Mohammad Hasan Shaibani (749-805), whereas Grotius (1583-1645) who has been widely considered the father of modern international law only published his treatise in 1625 (Anwar Ahmad Qadri 1986, 277). Moreover, Grotius himself drew heavily on Arabic works as it is

evident in chapter X (article 3) of his treatise, where he discussed the concept of postliminium (the return of things captured by every Muslim state as a matter of religious obligation.

Another important aspect in our plural societies, concerns a mutual understanding of one community or nation in respect of the rights of those who do not subscribe to its ideology or belief. Islam from the beginning recognized the concept of diversity and religious autonomy. This is evident in the Islamic private international law. For example, the Islamic recognition of an autonomous power in religious matters, by enabling non-Muslims to set up their separate courts to administer their own personal and family laws. Previous Islamic rule in territories such as Turkey or India invariably preserved to people of other faiths their traditional courts and laws. Hindus in India, members of the Greek Orthodox Church in the Ottoman Empire and Christians in Egypt, all enjoyed the continuance of their own personal laws without interference (Weeramantary 1988, 144)

This tolerance is significant, in view of the unresolved fundamental question, for instance in Britain, of whether growing pluralism of the British population should be expressed in legal pluralism too. Although there have been claims by the British Muslims to their own separate system of personal law, it seems very unlikely for the British government to accede to their application. Here, the Western version and conception of human rights appear to be a major stumbling block towards a greater religious freedom for the largest minority in Britain. The Western idea of human rights that abhors certain aspect of Islamic law, for example, the right of a husband in respect of divorce and polygamy, has apparently intruded and gone much deeper into the Msulim religious and family law matters. In February 2008, the Anglican Archbishop of Canterbury, Dr. Rowan Williams suggested in a public lecture that certain extensions of shariah law in Britain were both unavoidable and also desirable. The comments provoked public outrage and public reactions to this pronouncement were both swift and overwhelmingly negative (Rex Ahdar & Nicholas Aroney 2010, 43). Ironically, certain privileges were accorded to the Jews, Quakers, and Sikhs for religious reasons (Chibli Mallat & Jane Connors 1990, xii, 150, 159). The right to the protection of Islamic faith that was supposed to be developed under the law of blasphemy, had been denied, and its claim gradually overpowered by

another claim of other more valuable interest or, aspects of fundamental rights according to the Western mind, for example, freedom of the press (Abdul Samat Musa 1988).

The threat of the less tolerant Western world in general, especially with regard to the definition of human rights, and its apparent tendency to become the arbiter of what is right and proper is increasingly evident. A notable example is its onslaught on the religious freedom and values of the Muslim world. This is clear, for example, from the controversy over some issues, discussed in the International Conference on Population and Development (held in Cairo on September 5-13, 1994), in respect of the proposed imposition of western values, regarding sex, abortion and family life. This western morality if adopted, would have an adverse effect on the Islamic religious domain and family institution (New Straits Times, August 31, 1994). The Western failure to take non-Western values into account in the formulation of international policies, can also be witnessed in other areas, for example, in providing the definition of freedom and criteria of democracy and human rights (Chandra Muzaffar 1993).

On the other hand, Islam recognized a diversity of nations within the world community. The word *taaruf* (knowing or recognizing one another), in the Quranic verses mentioned earlier, implies peace, co-existence, cooperation, equality and justice, and not a relationship of dominance and subjugation. As Islam has its own notions relating to human rights governing both individuals and state, it is therefore justified and fair that its ideas should also be taken into consideration in the formulation of global policies, especially those concerning human rights. This is necessary in order to prevent the breakdown of a global concept of human rights.

CONCLUSION

Previous discussions demonstrate that Islam firmly guarantees both domestic and international protection of human rights. However, it must be recognised that not all noble principles of human rights are now completely realized in practice. Justice to all mankind, as commanded by Islam, must be seen to be done in all spheres of human life. Thus, the state should intensify efforts towards a more effective protection of human rights through executive,

administrative, legislative and judicial means. A part from states's responsibilities, the people also should have the same consciousness, so that by the due discharge of the respective rights and duties, human interests can be properly fostered in all social, economic, and political fields.

There is a close relationship between the Islamic constitutional principles and the protection of specific human rights. In view of the universal nature of the Islamic human rights and their connection with religion, the Muslim state, should consider to infuse their principles into its legal system, and ensure that new policies and constitutional interpretations do not run counter to such principles. In any event, according to Islam, the protection of human rights must always be founded on moral and religious principles.

At an international level, the Islamic conception of human rights should be equally given due weight, and the right of the individual nations to observe their own values should be respected, rather than suppressed by prejudiced and biased notions of human rights. This will ensure an equitable co-existence in our plural world. The world may also consider the potential contribution of the Islamic tradition and its fertile source in the creation of a peaceful and better world.

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